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13 BIRDDOG TECHNOLOGY LIMITED
14 BIRDDOG AUSTRALIA PTY LTD

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BIRDDOG TECHNOLOGY LIMITED,
an Australian company; and BIRDDOG
AUSTRALIA PTY LTD, an Australian
company,

Plaintiffs,

v.

2082 TECHNOLOGY, LLC DBA
BOLIN TECHNOLOGY a California
limited liability company; BOLIN
TECHNOLOGY CO., LTD., a Chinese
limited company; HOI "KYLE" LO, an
individual; JENNIFER LEE, an
individual; and DOES 3 through 25,
inclusive,

Defendants.

Case No.: 2:23-cv-09416-CAS-AGR_x

[Assigned to the Honorable Christina
A. Snyder]

**PLAINTIFFS BIRDDOG
TECHNOLOGY LIMITED'S AND
BIRDDOG AUSTRALIA PTY
LTD'S APPLICATION TO FILE
DOCUMENTS UNDER SEAL
REGARDING SECOND
AMENDED COMPLAINT;
DECLARATION OF RYAN
KEECH IN SUPPORT THEREOF;
[PROPOSED] ORDER**

1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR**
2 **COUNSEL OF RECORD:**

3 Pursuant to Central District of California Local Rule 79-5.2.2(a), Plaintiffs
4 Birddog Technology Limited and Birddog Australia Pty Ltd (“BirdDog”) hereby
5 apply for an order sealing limited portions of documents and information referenced
6 in and attached to BirdDog’s Second Amended Complaint (“SAC”) on the grounds
7 that the information consists of BirdDog’s confidential and proprietary business
8 information, which is not subject to a public right of access. The documents and
9 information at issue here are the same documents and information that were the
10 subject of the Application to Seal BirdDog previously filed in connection with its
11 Writ of Attachment, which the Court granted. (Dkt 56.)

12 **I. INTRODUCTION**

13 BirdDog’s SAC describes and includes as exhibits purchase orders that
14 identify wholesale purchase prices for camera equipment between BirdDog and
15 Defendants. The pricing information is commercially sensitive because it reveals
16 BirdDog’s cost to acquire camera equipment which they then resell to their
17 customers. Should this information become public, BirdDog would be substantially
18 prejudiced and irreparably harmed. BirdDog’s existing suppliers may demand more
19 favorable terms in light of BirdDog’s contracts with Defendants. BirdDog’s
20 competitors could use BirdDog’s pricing information as a benchmark for
21 negotiations with their own suppliers, and they may solicit BirdDog’s suppliers by
22 offering higher prices than BirdDog offers and demanding an exclusive contract that
23 precludes them from supplying BirdDog. The weight of authority shows that the
24 public right of access to information on the docket does not outweigh any of these
25 concerns. As such, the Court should seal BirdDog’s pricing information.

26 **II. LEGAL STANDARD**

27 “Courts have historically recognized a ‘general right to inspect and copy public
28 records and documents, including judicial records and documents.’” *Aya Healthcare*

1 *Servs., Inc. v. AMN Healthcare, Inc.*, 2020 WL 1911502, at *1 (S.D. Cal. Apr. 20,
 2 2020) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978)).
 3 “Generally, a party seeking to seal a judicial record can overcome the presumption
 4 in favor of access by ‘articulat[ing] compelling reasons supported by specific factual
 5 findings . . . that outweigh the general history of access and the public policies
 6 favoring disclosure, such as the public interest in understanding the judicial
 7 process.’” *Aya*, 2020 WL 1911502 at *1. “What constitutes a ‘compelling reason’
 8 is ‘best left to the sound discretion of the trial court.’” *Ctr. for Auto Safety v. Chrysler*
 9 *Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting *Nixon*, 435 U.S. at 599).

10 Under Local Rule 79-5.2.2(a), a party may seek leave to file a document under
 11 seal so long as the Application describes the nature of the information that should be
 12 closed to public inspection and is accompanied by: (1) a declaration establishing
 13 good cause or demonstrating compelling reasons why the strong presumption of
 14 public access in civil cases should be overcome and informing the Court whether
 15 anyone opposes the Application; (2) a proposed order; (3) a redacted version of the
 16 relevant documents; and (4) an unredacted version of the relevant documents.

17 **III. ARGUMENTS AND AUTHORITIES**

18 **a. BirdDog Has Established Good Cause And Demonstrated** 19 **Compelling Reasons Why The Presumption Of Public Access** 20 **Should Be Overtime.**

21 Courts routinely seal filings containing confidential business information that
 22 include “profit, cost, and margin data.” *See, e.g., Stewart v. Quest Diagnostics*
 23 *Clinical Lab'ys, Inc.*, 2022 WL 3719969, at *1 (S.D. Cal. Aug. 29, 2022) (sealing
 24 documents “that, if publicly disclosed, could potentially put Defendant at a
 25 competitive disadvantage”); *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir.
 26 2008) (holding petitioner would suffer irreparable harm should pricing terms, royalty
 27 rates, and other payment information be released to the public); *Apple Inc. v.*
 28 *Samsung Electronics Co.*, 727 F.3d 1214, 1224–25 (Fed. Cir. 2013) (holding parties

1 could suffer competitive harm if the parties suppliers have access to their profit, cost,
2 and margin data since suppliers would have an unfair advantage in contract
3 negotiations); *Obesity Rsch. Inst., LLC v. Fiber Rsch. Int'l, LLC*, 2017 WL 1035730,
4 at *3 (S.D. Cal. Mar. 17, 2017) (granting motion to seal documents containing
5 defendant's "pricing and shipping information" where court found such information
6 "could be improperly used" by competitors); *Lucas v. Breg, Inc.*, 2016 WL 5464549,
7 at *2 (S.D. Cal. Sept. 28, 2016) (applying compelling reasons standard to seal party's
8 confidential "sales and marketing data" where "public disclosure of this business
9 information could result in improper use by Breg's competitors seeking to undercut
10 Breg's market position").

11 "Where a party shows that its documents contain sources of business
12 information that might harm its competitive standing, the need for public access to
13 the records is lessened." *Algarin v. Maybelline, LLC*, No. 2014 WL 690410, at *3–
14 4 (S.D. Cal. Feb. 21, 2014) (quoting *Nixon*, 435 U.S. at 598).

15 Here, BirdDog requests that the Court seal product pricing information
16 contained in its SAC and the purchase orders attached thereto. Should BirdDog's
17 current or future product suppliers obtain this confidential purchasing price
18 information, such information would likely lead to these suppliers obtaining more
19 favorable terms for themselves during contract negotiations. (Declaration of Ryan
20 Q. Keech, ("Keech Dec.") ¶ 4.) Such a scenario would put BirdDog at a competitive
21 disadvantage compared to their current position. (Keech Dec. ¶ 4.)

22 Therefore, compelling reasons exist to seal the highlighted portions of the
23 above-described documents.

24 **b. BirdDog Has Complied With The Procedural Requirements under**
25 **Local Rule 79-5.2.2(a).**

26 BirdDog has complied with all procedural requirements for filing documents
27 under seal.
28

First, the Declaration of Ryan Q. Keech establishes good cause and demonstrates compelling reasons why the strong presumption of public access in civil cases should be overcome and Defendants have stated they do not oppose the Application. Second, a proposed order has been filed concurrently. Third, a redacted version of the relevant documents has been filed concurrently. Fourth, an unredacted version of the relevant documents has been filed concurrently.

IV. CONCLUSION

For the foregoing reasons, BirdDog respectfully requests that this Court grant their application to file portions of the below-identified confidential documents under seal.

Item to be Sealed Pursuant to L.R. 79-5.2.2(a)	Description of Information
BirdDog's Second Amended Complaint ("SAC") ¶¶ 46-47, 49-50, 52-53, 73-78.	Confidential pricing information related to the wholesale price BirdDog pays for certain cameras.
SAC, Ex. B.	Confidential pricing information related to the wholesale price BirdDog pays for certain cameras.
SAC, Ex. C.	Confidential pricing information related to the wholesale price BirdDog pays for certain cameras.
SAC, Ex. D.	Confidential pricing information related to the wholesale price BirdDog pays for certain cameras.
SAC, Ex. E.	Confidential pricing information related to the wholesale price BirdDog pays for certain cameras.

1 SAC, Ex. F.

Confidential pricing information related
to the wholesale price BirdDog pays for
certain cameras.

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4 SAC, Ex. G.

Confidential pricing information related
to the wholesale price BirdDog pays for
certain cameras.

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9 K&L GATES LLP

10 Dated: April 3, 2024

By: 

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Australia Pty Ltd